

NEW



**U.S. Department of
Transportation**
Office of the Secretary
of Transportation

NOTICE OF ACTION TAKEN

March 31, 1998

This serves as interim notice to the public of the action described below, taken orally by the Department official indicated; the confirming order or other decision document will be issued as soon as possible.

Application of **United Air Lines, Inc.** filed **3/13/98** in Docket **OST-98-3624** for:

XX *Exemption under 49 U.S.C. 40109 to provide the following service:*

Scheduled foreign air transportation of persons, property, and mail between a point or points in the United States, directly and via intermediate points and a point or points in Japan, and beyond.

Applicant rep.: **Jeffrey Manley, 202-637-9057** DOT analyst: **Terri Bingham, 202-366-2390**

DISPOSITION

XX *Granted (Subject to conditions, see below)*

*The above action was effective when taken: **March 31, 1998,** through **March 31, 2000,** or until 90 days after final Department action on United's corresponding certificate application in Docket OST 96-1131, whichever occurs earlier.*

XX *Under assigned authority (14 CFR 385) by:*

*Paul L. Gretch, Director
Office of International Aviation
(Petitions for review may be filed from now until
10 days after the confirming order/letter issues.
Filing of a petition shall not stay the effectiveness of
this action.)*

XX **The authority granted is consistent with the 1998 U.S.-Japan Memorandum of Understanding¹**

(See Reverse Side)

¹ On January 30, 1998, delegations of the United States and Japan signed a Memorandum of Consultations (MOC) that included attached understandings regarding the elements to be included in a Memorandum of Understanding. The delegations also agreed that the provisions of those understandings would be in effect provisionally upon signing of the MOC, pending conclusion of an interim agreement. The MOU was signed on March 14, 1998 by Secretary Slater and Japanese Foreign Minister Fujii, also with provisional effectiveness.

Except to the extent exempted or waived, this authority is subject to the terms, conditions, and limitations indicated:

XX Holder's certificate of public convenience and necessity

XX Standard Exemption Conditions (attached)

Remarks: In addition to the authority requested, we also *sua sponte* granted United authority to integrate its Japan services with its other services authorized by certificate or exemption.

Conditions: We made the authority granted subject to the following conditions:

(a) The authority granted to serve intermediate and beyond points in conjunction with Japan service is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route integration authority, by virtue of either the present action or other action of the Department, and is subject to all conditions attached to that authority.

(b) Any service provided under the route integration authority granted shall be consistent with all applicable agreements between the United States and the foreign countries involved.

Furthermore, (a) nothing in the award of the route integration authority requested should be construed as conferring upon United rights (including fifth freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless United notifies us of its intent to serve such a market and unless and until the Department has completed any necessary selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in United's authority by virtue of the route integration exemption granted here, but that are not then being used by United, the holding of such authority by route integration will not be considered as providing any preference for United in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue.

By Notice dated March 23, 1998, we required that answers to United's application be filed by March 25, 1998, and that replies be filed by March 27, 1998. Delta Air Lines, Inc. filed an answer in opposition, stating that the broad authority requested is more appropriately granted by certificate, and that, consistent with normal Department policy, any exemption authority granted should be limited to the city-pair markets United proposes to serve. United filed a reply, stating that award of blanket exemption authority to United is fully consistent with the Department's policy with respect to route awards under the U.S.-Japan MOU, and that Delta has presented no reason why United should not be granted a similar award.

We decided to grant the broad exemption authority sought by United. We have on a number of occasions granted broad exemption authority to carriers for foreign air transportation operations, including awards for services under the recent U.S.-Japan MOU. See, *e.g.*, the exemption award to Federal Express in Docket OST-98-3436 for Japan and to Spirit Airlines for U.S.-Canada authority in Docket OST-98-3403. In these circumstances, we found no basis to withhold the authority requested by United.